

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 359 Local Government Comprehensive Plans

SPONSOR(S): Duggan

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee		Roy	Darden
2) Civil Justice Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Community Planning Act (Act) governs community and land development in Florida by providing how local governments create, adopt, maintain, and amend their comprehensive plans, which in turn impact property rights and land uses within their respective jurisdictions. The Act requires each local government to adopt a comprehensive plan to provide for orderly and balanced future economic, social, physical, environmental, and fiscal development while taking into account projected population growth, public facility needs, development over a five-year and 10-year period, comprehensive plans of adjacent local governments, and future land use. A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 50 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan.

Every comprehensive plan must provide a capital improvements element on the need and location of public facilities, including a five-year schedule of necessary capital improvements. This element must be reviewed annually by the local government. Modifications updating the five-year capital improvement schedule may be done by ordinance and are not deemed to be amendments to the local comprehensive plan.

Any affected person may challenge whether the plan or plan amendments, including small scale plan amendments, comply with the Act, by petitioning the Division of Administrative Hearings (DOAH) for a hearing. Attorney fees are awarded in proceedings before DOAH only if the non-prevailing adverse party participated in the proceedings for an improper purpose. A local government decision on a development order that materially alters the use, density or intensity of particular real property as inconsistent with the plan may be challenged in court, but if the local government adopted an ordinance establishing certain statutory requirements, the decision may only be challenged by a petition for certiorari in the circuit court.

The bill revises the process for modifying the five-year capital improvement schedule, allowing the schedule to be updated administratively if all the projects have been adopted by the appropriate project board. The bill provides that for challenges to the comprehensive plan and plan amendments, including small scale plan amendments, the prevailing party is entitled to recover attorney fees and costs. Lastly, the bill clarifies the scope of review of a local government decision to grant or deny a development order by providing that the order may only be challenged if it would materially alter the use, density, or intensity of the property in a manner not consistent with the comprehensive plan.

The bill may have a positive fiscal impact both on local governments and private parties to the extent they may recover attorney fees and costs as prevailing parties in certain challenges to comprehensive plans and plan amendments. The bill may also have a negative fiscal impact on the same parties to the extent they are found responsible and must pay such fees and costs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

As required by the Community Planning Act (Act),¹ a comprehensive plan is a set of principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.² These principles and strategies must guide future decisions in a consistent manner and must contain programs and activities to ensure comprehensive plans are implemented. The plan must establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.³ A comprehensive plan contains mandatory and optional elements, all based upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.⁴

The comprehensive plan must contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities.⁵ The capital improvements element must include:

- A component outlining principles for construction, extension or increase in capacity, as well as a component outlining principles for correcting existing facility deficiencies, both of which must cover a five-year period;
- Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities;
- Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service;
- A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the five-year period must be identified as either funded or unfunded and given a level of priority for funding; and
- The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable metropolitan planning organization's long-range transportation plan.

The capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the five-year capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan.⁶

Any affected person may challenge whether a plan or plan amendment complies with the Act by petitioning the Division of Administrative Hearings (DOAH) for a formal hearing. An administrative law judge must hold a hearing in the affected local jurisdiction on whether the plan or plan amendment is in compliance.⁷

¹ Ss. 163.3161-163.3253, F.S.

² S. 163.3177, F.S.

³ *Id.*

⁴ S. 163.3177(1)(f), F.S.

⁵ S. 163.3177(3)(a), F.S.

⁶ S. 163.3177(3)(b), F.S.

⁷ S. 163.3184(5)(c), F.S.

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 50 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan.⁸ Any affected person may challenge a small scale plan amendment by petitioning DOAH for a hearing. An administrative law judge must hold a hearing in the affected jurisdiction.⁹ Attorney fees and costs are awarded in administrative proceedings before DOAH only if the non-prevailing adverse party participated in the proceedings for an improper purpose.¹⁰

An aggrieved or adversely affected party¹¹ may bring an action for declaratory, injunctive, or other relief against a local government to challenge a decision granting or denying an application for, or to prevent such local government from taking any action on, a development order, which materially alters the use or density or intensity of use on a particular piece of property in a manner not consistent with the comprehensive plan.¹² There is currently a split among Florida district courts of appeal concerning the application of this provision to “other aspects of development.”¹³

If a local government adopts an ordinance establishing certain statutory requirements, the sole method by which a decision granting or denying an application for a development order, which materially alters the use or density or intensity of use on a particular piece of property, on the basis that it is not consistent with the comprehensive plan, is by an appeal filed by a petition for writ of certiorari filed in circuit court.¹⁴ An action for injunctive or other relief may be joined with the petition for certiorari.

Effects of Proposed Changes

The bill amends the process for modifying the five-year capital improvement schedule. The schedule may be updated either by ordinance or administratively if all the projects have been adopted by the project’s appropriate board.

In proceedings before DOAH challenging a plan or plan amendments, including small scale plan amendments, the bill allows the prevailing party to recover attorney fees and costs, including reasonable appellate attorney fees and costs.

The bill seeks to resolve a split among Florida district courts of appeal by clarifying that the scope of review for a challenge to a local government decision to grant or deny a development order is limited to whether the development order would materially alter the use, density, or intensity of a property in a manner not consistent with the comprehensive plan.

⁸ S. 163.3187(1), F.S. If the amendment involves a site within an area of rural opportunity, the proposed small scale amendment may involve up to 100 acres. S. 163.3187(3), F.S.

⁹ S. 163.3187(5)(a), F.S.

¹⁰ S. 120.595(1)(b), F.S. “Improper purpose” is defined as participating “in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.” S. 120.595(1)(e)1., F.S.

¹¹ Defined as any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order. S. 163.3215(2), F.S.

¹² S. 163.3215(3), F.S.

¹³ Compare *Heine v. Lee Cnty*, 221 So. 3d 1254 (Fla. 2d DCA 2017) (scope of claims limited to use, density, and intensity challenges only) with *Imhof v. Walton Cnty*, 328 So. 3d 32 (Fla. 1st DCA 2021) (scope of claims includes other aspects of development that render the development order inconsistent with comprehensive plan).

¹⁴ S. 163.3215(4), F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 163.3177, F.S., to authorize administrative approval of modifications to update the capital improvements component of a plan if all projects are adopted by appropriate board.
- Section 2: Amends s. 163.3184, F.S., to permit the prevailing party in administrative challenges to a comprehensive plan or plan amendment to recover attorney fees and costs including reasonable appellate attorney fees and costs.
- Section 3: Amends s. 163.3187, F.S., to permit the prevailing party in small scale plan amendment claims to recover attorney fees and costs including reasonable appellate attorney fees and costs.
- Section 4: Amends s. 163.3215, F.S., to clarify the scope of review for challenges to a local government decision on a development order.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on county and municipal governments to the extent those governments are engaged in litigation concerning their comprehensive plan and whether those governments are the prevailing party in those actions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES